

**A. PURPOSE AND SCOPE**

**New Section . What is the purpose of the Mortgage Broker Practices Act?**

To establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.

RCW 19.146.050

**New Section . What is the purpose of the Mortgage Broker Practices Act rules?**

The purpose of these rules is to administer and interpret the Mortgage Broker Practices Act in order to govern the activities of licensed mortgage brokers, loan originators and other persons subject to this chapter.

RCW 19.146.223, .225

**New Section . What are rules and why do we need them?**

A rule (or regulation) is a written policy or procedure by a state agency that is generally applicable to a group of people, industries, activities, or circumstances. Rules are used by agencies to "fill in the gaps" of legislation. They implement, interpret, apply or enforce a state or federal law or court decision. A rule is adopted by an agency; a statute is a law that is passed by the state Legislature. In both cases, state law provides for citizen participation before a rule or law is approved.

**New Section . What is the scope and coverage of the Mortgage Broker Practices Act and these rules?**

(1) **Scope and Coverage.** There are four tests to determine the scope and coverage of the Mortgage Broker Practices Act and these rules: 1) the persons or entities conducting business; 2) the type of transactions performed when conducting the business; 3) the persons the business is conducted with; and 4) residential real estate. All of the tests must be met in order for a person or entity to fall under the scope and coverage of the Act and these rules. [CC042406: This section still needs work as discussed below under #4.] (2) **What persons or entities are covered?** The Mortgage Broker Practices Act and these rules apply to all persons or entities defined as mortgage brokers or loan originators under RCW 19.146.010(10) and (12), however, certain mortgage brokers and their loan originators may be exempt from all or part of the Act under RCW 19.146.020 as discussed

in part under the Exemption Section of these rules. **(3) What type of transactions are covered?** The Mortgage Broker Practices Act and these rules cover the making or assisting in obtaining of any "residential mortgage loan" defined under RCW 19.146.010(15) and WAC 208-660-XXX. The terms "making" and "assisting" are further defined under WAC 208-660-XXX. **(4) Who is the business conducted with?** The Mortgage Broker Practices Act and these rules are concerned with business conducted with Washington consumers. For purposes of these rules, Washington consumers include (a) Natural persons physically located inside the borders of Washington State regardless of the location of the residential property securing the loan. [CC042406: (a) needs more discussion and legal research.] b) Natural persons physically located outside the borders of Washington State conducting business related to residential property located within the borders of Washington State. **(5) What is residential real estate?** Residential real estate is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units. Residential real estate does not have to be located in the state of Washington. [CC042406: This last sentence needs legal research and discussion.] Residential real estate includes, but is not limited to: a) A single family home; b) A duplex; c) A triplex; d) A fourplex; e). A single condominium in a condominium complex; f) A manufactured home when the home and real property together will secure the residential mortgage loan; however, residential real estate does not include, g) An apartment building or dwelling of five or more units; h) A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; i) Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park.

**New Section . What examples are there of business falling under the scope and coverage of the Mortgage Broker Practices Act and these rules?**

1). A loan originator employed with ABC Mortgage, Inc. with a physical office in Redmond, Washington takes a loan application from a Kirkland, Washington resident for the purchase of a home located in Bellevue, Washington. ABC Mortgage, Inc. is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020(1)(a)(i). The home located in Bellevue meets the definition of residential real estate and the purchaser intends to reside in the home.

## **B. DEFINITIONS**

**New Section . What definitions are applicable to these rules?**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advertising material" means any form of sales or promotional materials to be used in connection with the mortgage broker business.

(2) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(3) "Application" means the same as in Regulation X, Real Estate Settlement Procedures Act, 24 C.F.R. Sec.3500 as of the effective date of these rules, which is the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a residential mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

(4) "Application deposit" means a deposit in immediately available funds consisting of the equivalent of ten hours investigation fees under WAC 208-660- for each license applied for and the equivalent of five hours investigation fees under WAC 208-660- for each branch office certificate applied for.

(5) "Approved licensing or continuing education course" means a licensing or continuing education course approved by the director.

(6) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(7) "Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

(8) "Branch office certificate" means a branch office license issued by the director to engage in the mortgage broker business as the branch office indicated in the certificate, pursuant to RCW 19.146.265.

(9) "Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

(10) "Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

(11) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

(12) "Consumer Protection Act" means chapter [19.86](#) RCW.

(13) "Control" including the terms "controls", "is controlled by", or "is under common control" shall mean the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person shall be presumed to control another person if such person is a director, a designated broker, an owner of 25% or more of the licensee, a general partner, an officer exercising executive responsibility, or any person having similar status or function in the business.

(14) A person is "convicted" of a crime, irrespective of the pronouncement or suspension of sentence, if the person: (a)is convicted of the crime in any jurisdiction;(b)is convicted of a crime which, if committed within this state would constitute such a crime under the laws of this state; (c)has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or (d) has been found guilty of such a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury.

(15) "Department" means the department of financial institutions.

(16) "Designated broker" means a natural person designated by the mortgage broker licensee as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter, whose application must be accepted and approved by the Department, and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(17) "Director" means the director of financial institutions.

(18) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an

employee by the mortgage broker for purposes of compliance with federal income tax laws.

(19) "Examination" or "Compliance examination" means the examination performed by the Division to determine whether the licensee is in compliance with applicable laws and regulations.

(20) "Financial institution" means a federally insured bank, savings bank, savings and loan association, or credit union, whether state or federally chartered, authorized to conduct business in this state.

(21) "Financial misconduct" means without limitation: (a)Any conduct prohibited by the Mortgage Broker Practices Act;(b)Any similar conduct prohibited by statutes governing mortgage brokers in other states; (c)Any similar conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; and, (d) Any conduct commonly known as white collar crime, to include mail fraud, wire fraud, money laundering, check fraud, or similar crimes.

(22) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws. Generally, a person is not subject to the other's right of control if that person is not instructed about when, where and how to work, if the person is not guaranteed a regular wage, the person is not reimbursed for business expenses, if the person maintains a separate business, if the person is exposed to potential profits and losses, and if normal employee benefits such as insurance, a pension plan and vacation and sick pay are not provided.

(23) "Licensee" or "licensed mortgage broker" means:  
(a)A mortgage broker licensed by the director; (b) a loan originator licensed by the director; (c)any person subject to licensing under RCW 19.146.200; and (d)any person acting as a mortgage broker or loan originator subject to any provisions of the Act.

(24) "Loan originator" means (Laura is working on this)

(25) "Loan originator licensee" means a natural person who is licensed as a loan originator or subject to licensing.

(26) "Lock-in agreement" means (Rich B is working on this)

(27) "Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

(28) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan. A person "makes" a loan if the loan is closed in that person's name, or that person advances, offers to advance or makes a commitment to advance funds to a borrower for a loan. A person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms, including but not limited to, rates, fees and other costs, preparing loan packages or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X.

(29) "Mortgage Broker Branch Office Licensee" means a person that is licensed as a branch office of a mortgage broker or subject to licensing.

(30) "Mortgage Broker Licensee" means a location that is licensed as a mortgage broker or subject to licensing.

(31) "Mortgage Broker Practices Act" means chapter 19.146 RCW and chapter 208-660 WAC.

(32) "Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

(33) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(34) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the security property.

(35) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(36) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units. This includes loan application [CC042406: Add, "for a refinance of a primary residence for any purpose, and loan application"] on second homes and loan application on non-owner occupied residential real estate if the proceeds of the loan are intended to be used primarily for personal, family or household use.

(37) "Subsidiary" means a corporation, company, partnership, or association that is controlled by another.

(38) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(39) "Written examination" means a written test approved by the director.

[CC042406: Additional definitions will be added as they are discussed and drafted.]

### **C.EXEMPTION FROM LICENSING**

**New Section . If I am licensed as an insurance agent, do I need a separate license to act as a mortgage broker or loan originator?**

If you intend to make a residential loan, or take a residential mortgage loan application for a mortgage broker, or offer or negotiate the terms of a mortgage loan, for compensation or gain, or hold yourself out as being able to do so, you will need a separate license as either a mortgage broker or a loan originator. [CC042406: Need to clarify that the insurance company exemption does not apply to independent insurance agents.]

**New Section . If I am doing business under the Consumer Loan Act when would I have to have a Mortgage Broker license?**

- (1) If you are brokering loans under your Consumer Loan Act license [CC042406: "and these loans are subject to the authority of that act"] and you are including those loans for purposes of the annual assessment payment under the Consumer Loan Act, your activity is exempt from the Mortgage Broker Practices Act.
- (2) If you are brokering loans that are not subject to your Consumer Loan Act annual assessment, you will need to license as a mortgage broker unless you fall under an exemption other than RCW 19.146.020(b).

**New Section . As an attorney, do I need a mortgage broker or loan originator license when I negotiate a residential mortgage loan in the course of my practice?**

As an attorney, you are exempt from the Act under RCW 19.146.020(1)(c) if you are not principally engaged in that business. [CC042406: "that" needs clarification. Perhaps "mortgage broker"] Whether an exemption is available to you depends on the facts and circumstances of a particular situation. If you hold yourself out publicly as being able to perform the services that would otherwise require licensing as a mortgage broker or loan originator, if you charge separately for those services or if your fee structure for those services is different from the schedule for your normal professional services, you will be deemed to be principally engaged in the mortgage business thus you would need a mortgage broker or loan originator license before performing those services.

**New Section . As a licensed real estate broker or salesperson, do I need a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?**

You are exempt from the Act under RCW 19.146.020(1)(g) if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of fees associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the purchase and sale agreement for the bona fide sale of the subject property. [CC042406: Consider adding examples here.]

**New Section . Under what circumstances will the Director approve an exemption under RCW 19.146.020(4) for the loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?**

(1) The Director will provide a written exemption from licensing for loan originators working for an affiliate of a bank that is wholly owned by the bank holding company that owns the bank if the Director finds that:

- (a) The affiliate is in "good standing" with the Department;
- (b) The loan originators working for the affiliate of a bank work as exclusive agents and do not operate as loan originators for other mortgage brokers;
- (c) The affiliate of the bank requires continuing education for loan originators that meets the same or similar requirements approved by the director for licensed loan originators;
- (d) The loan originator working for such affiliate of the bank has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of beginning work for the affiliate. [CC042406: The last part of this sentence doesn't make logical sense. We need to rework. Perhaps end after "seven years."] This includes having a supervisory plan in place requiring notification of the Department if an approved agent is convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony.
- (e) The loan originator working for such affiliate of the bank has not had a loan originator or similar license revoked or suspended within the last five years.

(2) To qualify for this exemption, the affiliate must make a written request to the Department. After receipt of this request the Department will notify the exclusive agent in writing within 90 days whether or not it qualifies for the exemption.

(3) The exemption granted by the Director remains valid [CC042406: "until revoked"] (a) as long as the affiliate maintains the same business model for using loan originators and (b) the affiliate remains in good standing with the Department.

(4) If the affiliate changes its business model, it must notify the Department and apply for another exemption if applicable.

#### **D. MORTGAGE BROKER MAIN OFFICE**

- 1. General
- 2. Exempt Mortgage Brokers
- 3. Continuing Education
- 4. Transfer of Mortgage Broker Business

**E. DESIGNATED BROKERS**

1. Designated Broker Responsibilities
2. Designated Broker Liabilities
3. Testing

**F. MORTGAGE BROKER BRANCH OFFICES**

**G. LOAN ORIGINATORS**

1. Testing
2. Continuing Education

**H. OUT-OF-STATE MORTGAGE BROKERS AND LOAN ORIGINATORS**

**I. MORTGAGE BROKER LICENSING**

**J. MORTGAGE BROKER BRANCH OFFICE LICENSING**

**K. LOAN ORIGINATOR LICENSING**

**L. DISCLOSURE OF SIGNIFICANT AND ADVERSE DEVELOPMENTS**

**M. PROHIBITED PRACTICES**

**N. DISCLOSURE REQUIREMENTS**

**O. MORTGAGE BROKER AND LOAN ORIGINATOR FEES**

**P. CONTRACTS**

**Q. TRUST ACCOUNTING**

**R. RECORD KEEPING REQUIREMENTS**

**S. ADVERTISING**

**T. AGENCY FEES AND COSTS**

**U. REPORTING REQUIREMENTS**

**V. DIRECTOR AND AGENCY POWERS**

1. Examination Authority
2. Examination Process
3. Examination Procedures
4. Investigation Authority
5. Investigation Process
6. Enforcement Authority

- 7. Enforcement Process
- 8. Complaint Process

**W. MORTGAGE BROKER COMISSION**

**X. OTHER REQUIREMENTS**

**Y. AGENCY GUIDANCE AND TECHNICAL ASSISTANCE (see RCW 35.04)**

**Z. FORMS**